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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Item 3 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

Written statement submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 July 1998]

GE.98-13180 (E)

Direct and public incitement to commit genocide

1. The Association for World Education warmly welcomes the support given to the Convention on the Prevention and Punishment of the Crime of Genocide on its fiftieth anniversary, in particular Commission resolution 1996/10 in which the Commission reiterated the need for universal ratification and emphasized the importance of speedy prevention, and called upon all States to increase and intensify their activities aimed at the full implementation of the provisions of the Convention.

2. The Genocide Convention is a landmark in the efforts to develop a system of universally accepted standards which promote an equitable world order for all members of the human family to live in dignity. Three articles are at the heart of this Convention and are here quoted in full to understand the process of implementation proposed by us:

"Article II

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

"(a) Killing members of the group;

"(b) Causing serious bodily or mental harm to members of the group;

"(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"(d) Imposing measures intended to prevent births within the group;

"(e) Forcibly transferring children of the group to another group.

"Article III

"The following acts shall be punishable:

"(a) Genocide;

"(b) Conspiracy to commit genocide;

"(c) Direct and public incitement to commit genocide;

"(d) Attempt to commit genocide;

"(e) Complicity in genocide."

"Article VIII

"Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III."

3. The Genocide Convention was adopted on 9 December 1948 by the United Nations General Assembly - the day before the proclamation of the Universal Declaration of Human Rights - and came into force in 1951. Although reports have reached the United Nations of actual or potential situations of genocide, no Contracting Party has called for action under article VIII of the Convention.

4. The need for speedy preventive measures has been repeatedly underlined by United Nations officials. As the former United Nations High Commissioner for Human Rights, Mr. José Ayala-Lasso, declared on 31 August 1995: "I agree that one of the fundamental methods to combat genocide is prevention of this crime. Prohibiting and punishing public incitement to commit genocide should be endorsed by the international community, pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide."

5. Likewise, in a key address in 1997 at the Holocaust Memorial Museum in Washington, the United Nations High Commissioner for Refugees, Mrs. Sadaka Ogata, declared: "As we all know, genocide, characterized by the intent to destroy national, ethnic or religious groups is the most violent and pernicious form of human rights violations. Yet in the decades since the Holocaust, we have not been able to prevent or halt even the most brutal forms of violence against whole groups of people." Mrs. Ogata appealed to the international community to "be prepared to halt the worst evil at its source," adding: "We need a strong United Nations human rights machinery to prevent but also to expose violations of human rights. We also need an international criminal court" (Washington Post, article adapted from her speech and republished in the International Herald Tribune, 6 May 1997).

6. The lack of governmental action to prevent genocide in the past has led the Sub-Commission on Prevention of Discrimination and Protection of Minorities to request two reports prepared by its members, one by Mr. Nicodène Ruhashyankiko (E/CN.4/Sub.2/1978/416) and an updated report by Mr. Benjamin Whitaker (E/CN.4/Sub.2/1985/6 and Corr.1).

7. In his 1978 report, Mr. Ruhashyankiko proposed mechanisms for the study of information on genocide and genocidal practices. He wrote:

"A number of allegations of genocide have been made since the adoption of the 1948 Convention. In the absence of a prompt investigation of these allegations by an impartial body, it has not been possible to determine whether they were well-founded. Either they have given rise to sterile controversy or, because of the political circumstances, nothing further has been heard about them. For these reasons, the Special Rapporteur feels that the Commission on Human Rights should consider the setting up of ad hoc committees to inquire

into allegations of genocide brought to the knowledge of the Commission by a Member State or an international organization and supported by sufficient prima facie evidence" (para. 614).

8. Such an ad hoc body would also be particularly qualified to study examples of "direct and public incitement to commit genocide". The Genocide Convention, in its provisions concerning public incitement, sets the outer limits of political discourse. Groups, peoples, social classes or categories are not to be attacked and threatened. The Genocide Convention is a constant reminder of the need to moderate political discourse, especially constant and repeated accusations against a religious, ethnic, and social category of persons.

9. The right to freedom of expression - upheld by article 19 of the Universal Declaration of Human Rights and by article 19.2 of the International Covenant on Civil and Political Rights - can be limited only in closely defined circumstances. However, a certain form of "expression" ("hate speech"), which denies the human rights of whole groups of people, can lead to mass killing and genocide. Thus, there should be universally agreed-upon limits to forms of "expression" that are incitements to kill; these limits can be based on the principles set out in article 20.2 of the above-mentioned International Covenant: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

10. Such an ad hoc committee would constantly reinforce these outer limits of political discourse by investigation and public analysis of socio-political speeches, documents or founding charters of movements which blatantly spell out murderous - even genocidal - aspirations. While some non-governmental organizations have done useful work in monitoring hate and genocidal discourse in texts, in audio-visual media and on the Internet, public analysis must be carried out at the highest international level, which is the United Nations system.

11. In addition to the possibility of setting up an ad hoc committee specifically devoted to genocide and direct and public incitement to commit genocide, there is also the possibility of using the procedures of the Committee for the Elimination of Racial Discrimination.

12. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination, under its article 4 condemns: "... all propaganda and all organizations which ... attempt to justify or promote racial hatred and discrimination in any form," obliging, in article 4 (a), States parties to declare as "an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons". It also affirms, under article 4 (b), that States parties "shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law".

13. This Convention has set up a body of independent experts - the Committee for the Elimination of Racial Discrimination (CERD) - to examine reports by State parties. Through its urgent procedures mechanisms, CERD also has the possibility of taking early warning measures aimed at preventing existing strife from escalating into conflicts, and to respond to problems requiring immediate attention.

14. On 21 March 1995, at a public United Nations round table, in response to a question, the then CERD Chairman, Mr. Ivan Garvalov, indicated the connection between the 1948 Genocide Convention and the 1965 International Convention for the Elimination of All Forms of Racial Discrimination: "There is indeed a mechanism for CERD to act immediately under article 4 of its Convention in regard to any mass media appeals and to any other incitement to racial discrimination and violence leading to genocide." Since then, this link between the two Conventions is under discussion and awaits its full implementation. The effectiveness of an implementary system depends on two things: the machinery set up for the task, and the will to make use of the machinery.

15. To mark the fiftieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide, the Association for World Education calls upon the Sub-Commission, at its fiftieth session, to:

(a) Strongly condemn any direct and public incitement to commit genocide, as defined in article III (c) and article IV of the Convention on the Prevention and Punishment of the Crime of Genocide and in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) Recommend that - until the International Criminal Court has authority to act in such cases - States parties should automatically invoke article VIII of the Genocide Convention, whenever "direct or public incitement to commit genocide" is manifested by whomsoever;

(c) Address a resolution to the Commission on Human Rights to study ways in which an ad hoc committee on genocide can be established, as recommended in the 1978 Sub-Commission report by Mr. Ruhashyankiko;

(d) Recommend that the capacity of CERD's urgent procedures mechanisms be strengthened so that CERD may more fully investigate any direct and public incitement to commit genocide.